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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1392nd MEETING

Held at Headquarters, New York,
on Wednesday, 22 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. BÁN
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Paraguay (CCPR/C/84/Add.3, HRI/CORE/1/Add.24)

1. At the invitation of the Chairman, Mr. Salum Flecha (Paraguay) took a place at the Committee table.

2. Mr. SALUM FLECHA (Paraguay), introducing his country's initial report, said that since the restoration of democracy in 1989, Paraguay had ratified a series of United Nations and Inter-American human rights instruments, including the Optional Protocol to the International Covenant on Civil and Political Rights. It had recognized the binding jurisdiction of the Inter-American Court of Human Rights and had adopted a modern, flexible Constitution guaranteeing the full range of rights. The international instruments had been incorporated into national legislation, just below the Constitution in order of precedence.

3. Human rights bodies had been established within each of the three branches of government: in the judiciary, an Office of the Prosecutor for Human Rights had been set up within the Attorney-General's Office in order to do away with the formerly interminable trials; both legislative chambers had a Human Rights Commission, each with its Legal Advice Office; and in the executive branch, the Directorate-General for Human Rights had been set up in 1990 to work with other government bodies, the United Nations Centre for Human Rights and the United Nations Development Programme to promote and publicize human rights and to provide official training in human rights. The Government also hoped to create a new human rights culture among the young through education.

4. A bill was currently before Parliament seeking indemnification for those who had been wrongly convicted under the dictatorship, in accordance with the Pact of San José.

5. The 1992 Constitution recognized various guarantees: habeas corpus could now be invoked before any judge of the first instance, even during states of emergency. Public seminars were being held on the new Constitution so that the people could learn of and exercise their rights.

6. His Government looked forward to hearing the Committee's recommendations regarding its report.

7. Mr. BRUNI CELLI said that, as the new Government had moved to institute sweeping political and legislative changes, Paraguay had become an example of how the advent of democracy fostered the protection of human rights. More information would be welcome on the way in which the new Government had conducted its investigations of the violations committed during 34 years of dictatorship and how it determined accountability.

8. Mr. BÁN commended Paraguay for its very detailed, systematic report and its outspokenness regarding shortcomings. There had been extraordinary improvements in a short period of time and a determined effort to redress past wrongs. He noted that Paraguay had made no reservations to the Covenant, but he wondered whether the country's legal system had been scrutinized in the light of the Covenant prior to ratification, and what legislative mechanisms would be used to reconcile any incompatibility between the Constitution and the Covenant since it had become part of national legislation. It would also be interesting to have more information on the role of the Ombudsman in protecting human rights and on the actual working relationship between the Legal Advice Office and the Human Rights Commission of the Chamber of Deputies (CCPR/C/84/Add.3, para. 15).

9. The report was ambiguous as to the death penalty: paragraphs 133 and 138 declared that the Constitution had abolished it, but paragraph 135 gave the impression that it could still be applied. In that connection, it would be interesting to know if Paraguay had any intention of ratifying the second Optional Protocol to the Covenant. Also with regard to the right to life, the age-limit set in article 334 of the Penal Code (para. 106) should be explained.

10. Under article 7, no reference was made to any problems in the treatment of detainees, yet Paraguay's report to the Committee against Torture had referred to allegations of ill-treatment in police stations even after the restoration of democracy, a fact corroborated by Amnesty International. He wondered whether any steps had been taken to eliminate such violations.

11. Articles 46 and 47 of the Constitution extended due process to "all inhabitants" (para. 291), but that seemed more restrictive than article 14 of the Covenant, which spoke of "every human being". Also, he wondered whether a judicial system based mainly on written proceedings was consistent with the requirement of fairness and publicity of proceedings set out in article 14.

12. More information would be useful on the actual legal situation of minors under the age of 14 who committed criminal offences (paras. 220 ff.). Regarding the irremovability of judges (para. 294), it was not clear how the five-year appointment provision was in keeping with stability of tenure. He would also like to know more about the actual time-limits for civil judicial decisions (para. 308) and whether they applied also to criminal procedure.

13. On the question of freedom of religion, it was not clear whether the constitutional provision explicitly recognizing the leading role played by the Catholic Church (para. 427) was a declarative or a normative text, how the status of the Catholic Church differed from that of other religions under the Civil Code (para. 429) and whether any distinction was made between the various religions in assigning penalties for disturbing ceremonies (para. 432).

14. The requirement that candidates for the Legislature must be of Paraguayan nationality by birth (para. 543) seemed to be a restriction of the rights under article 25 of the Covenant. It was also his impression that members of the armed forces did not enjoy the right to vote, again a restriction. Given the

unusually high number of irregular ballots cast in the 1993 elections (para. 548), it would be good to have more information on how elections were supervised.

15. Mr. Bán, Vice-Chairman, took the Chair.

16. Mrs. EVATT observed that the forward-looking provisions of Paraguay's Constitution nevertheless still required some legal enactment. For example, the indemnity provisions in article 17, paragraph 11, and article 39 of the Constitution apparently had yet to be regulated (para. 375 of the report), as did the very impressive press rights under articles 26 to 31 of the Constitution (para. 451 of the report). On the other hand, the core document (HRI/CORE/1/Add.24, para. 170) indicated that there was no impediment to enforcement of any international human rights law that constituted part of Paraguay's legal arsenal, and she wondered if that meant that article 9, paragraph 9, of the Covenant, or indeed the specified articles of the Constitution, could operate independently in the absence of specific laws. She would also appreciate clarification as to whether such new laws, when enacted, would have to comply with both the Constitution and the Covenant, and whether the courts would have the power to strike down any that did not strictly conform.

17. More comprehensive information should be given about action taken against the perpetrators of abuses under the former regime, such as those referred to in paragraphs 22 and 159 of the report, and in particular about the extent of compensation to victims. More details should also be given regarding the country's transition process. Information received from non-governmental organizations suggested that the police, the army and even the judiciary were undergoing the transition to the rule of law with difficulty and that there were problems with the depoliticization of institutions.

18. The report provided encouraging information regarding human rights education, but more commitment was needed at the highest levels of government. Women's rights appeared to be well safeguarded in articles 48, 60 and 61 of the Constitution but she wondered whether they were realized in practice. There seemed, for instance, to be a low level of participation by women in the political process (para. 82 of the report) as well as a discriminatory application of the penalties for rape and murder (paras. 78-80), indicating that attitudes needed to be changed and legislation reformed if the Constitution itself was to have full effect. The data provided in both the core document and the report regarding the high rate of maternal mortality and the high incidence of illegal abortion also conflicted with the guarantees under article 61 of the Constitution.

19. There seemed to be a high drop-out rate and level of illiteracy in Paraguay, particularly among the indigenous people. She requested information on measures to ensure that all children had access to education and to guarantee compliance with child labour laws. The reporting State should explain why the marriage age for girls was lower than that for boys. Further details would be appreciated on the legal limits on pre-trial detention in Paraguay. Reports indicated that many people were held beyond the 48-hour period referred to in paragraph 194 of the report before appearing before a court.

20. Mrs. MEDINA QUIROGA commended Paraguay for the progress it had made in improving its human rights situation and in incorporating economic, social and cultural rights into its Constitution. Positive efforts were being made to investigate past human rights violations.

21. Paragraph 47 of the report implied that there was discrimination against children born out of wedlock since they did not have the same rights as those born in wedlock with regard to inheriting joint property. According to paragraph 79, criminal acts of rape and abduction were regarded as offences against public propriety and decency, and a discriminatory classification of women who had been raped and abducted still existed, since harsher penalties were applied in the case of married women. Such acts constituted above all a violation of the physical integrity of women, and she urged the reporting State to revise its legislation in that regard.

22. It would be useful to know whether women in Paraguay had access to family planning programmes and birth control methods. Paragraph 81 of the report indicated that different penalties were enforced for abortion and that it was only the woman and the abortionist, not the male progenitor, who were punished. If abortion was to be considered an offence at all, there should be no discrimination in the treatment of the pregnant woman and the male progenitor.

23. Paraguay was to be commended for having imposed constitutional limits on the declaration of a state of siege. Further information should be provided on the reasons why women had been excluded from political posts (para. 84). The reporting State should also explain the general criteria for determining penalties in criminal law and indicate whether a law which provided for the death penalty could be declared unconstitutional by a judge or the Supreme Court.

24. Paragraphs 151 and 229 of the report stated that the purpose of the Paraguayan prison system was to keep in custody untried prisoners who were under investigation and persons who had been sentenced to imprisonment. That seemed to violate the right to liberty set out in article 9 of the Covenant. Pre-trial detention amounted to punishment and should be applied as an exceptional measure, particularly in view of the presumption of innocence on the part of detainees awaiting trial.

25. Paragraph 217 of the report indicated that there were fundamental differences in the treatment of convicted prisoners and persons awaiting trial. It was her impression that Paraguay was not complying with the provisions of the Covenant governing treatment of convicted prisoners, since persons awaiting trial enjoyed privileges that should be accorded to all detainees. She agreed with Mr. Bán on the disadvantage of appointing judges for five-year periods (para. 294). Paragraph 297 of the report indicated that court hearings should be public unless it was deemed necessary or advisable that they should be private. The reporting State should explain who decided whether a hearing would be private and whether an adult could choose not to have a private hearing. It would be useful to know what was meant by the statement in paragraph 311 of the report that "every natural person having legal capacity may, personally in legal proceedings, exercise his own rights".

26. Further details would be appreciated with regard to the current role of the Roman Catholic Church in Paraguay. Referring to paragraph 452 of the report, she requested additional information on the operation of private radio and television transmitters in Paraguay. Lastly, paragraph 323 of the report implied that a defendant over the age of 10 but under 15 could be declared capable of committing an offence and prosecuted under the law, and she wished to know if that was the case.

27. Mr. PRADO VALLEJO commended the Government of Paraguay for the great progress it had made in its transition to a democracy and in ensuring respect for human rights. However he, too, sought further information on the role played by the Catholic Church in Paraguay. Paragraph 429 of the report stated that the Civil Code granted the Catholic Church legal status in a different way from that of other religions, which suggested that discrimination might be practised against the other religions.

28. Paragraphs 5 and 6 of the report referred to the possibility under the Constitution of denouncing human rights treaties. The Committee would appreciate further information in that regard and would like to know whether there were rights that could be suspended in emergency situations. Article 4 of the Covenant stipulated that there were certain rights which could not be suspended. Were those rights guaranteed under Paraguayan law?

29. Numerous human rights violations had been reported during the dictatorship of General Stroessner. The reporting State should indicate whether those violations had been investigated and whether the persons found guilty of violations had been punished and the victims compensated.

30. There were reports of the mistreatment of conscripts in the Paraguayan armed forces and the recruitment of minors for military service. Additional information should be provided on those two points and on the recourse available to conscripts who were mistreated. There seemed to be cases in which the status of conscientious objectors was not respected by the military forces in Paraguay. He wondered whether that was the case and whether the text of the Covenant had been disseminated in order to inform the general public about the Government's obligations and steps taken to comply with them. Additional information should also be provided to explain why students in military and police institutions were prohibited from voting in elections.

31. Lastly, it would be useful to have further details on bilingual education in Paraguay. The phrase in paragraph 571 (c) of the report "and therefore avoid producing functional illiterates by literacy in Guaraní alone" should be explained.

32. Mr. MAVROMATTIS said that Paraguay had given ample evidence of its serious intention to establish democracy in the country. It was obvious, however, that much remained to be done to eliminate the "dead wood" remaining in the national legislation which was inconsistent with the new Constitution. He inquired whether judges and officials who had served during the period of dictatorship remained in office and whether they were likely to impede progress.

33. Paragraphs 5 and 6 of the report suggested that it was rather easy under the Constitution to denounce human rights treaties. Since there was no provision under the Covenant for denunciation, that should be looked into. It would be interesting to learn whether there was any overlapping between habeas corpus and the remedy of amparo in Paraguay, since both were provided for under the law.

34. Paragraph 62 of the report dealt with cohabitation and stated that "after a 10-year period, the children of the union shall be considered as having been born in wedlock". That implied that there was discrimination against children born before the 10-year period had passed. Paraguayan laws seemed to provide different sentences for the rape or abduction of married women. He felt that it would be better to allow the judiciary to take into consideration aggravating and extenuating circumstances in sentencing rather than imposing minimum and maximum penalties under the law. The reporting State should indicate whether suicide was a crime in Paraguay and explain the rules governing the use of lethal force by the police and security forces.

35. According to paragraph 81, abortion was a very serious problem in Paraguay because of the number of deaths among expectant mothers. He inquired whether Paraguay had considered decriminalizing abortion and reviewing its existing abortion laws. Referring to paragraph 263 of the report, he inquired whether the phrase "maintenance duties" applied to both mothers and children and requested an explanation of the term "judicial security".

36. Paragraph 133 of the report implied that the death penalty continued to exist under anachronistic but still operative criminal law. The reporting State should explain whether the death penalty had really been abolished and what was being done to amend its criminal law in that area.

37. An independent judiciary was essential for ensuring the exercise of human rights and fundamental freedoms. It would be useful to have further information on how the independence of the judiciary was guaranteed in Paraguay. Whereas neither the election of judges nor their appointment for short terms was conducive to ensuring an independent judiciary, the irremovability of judges was one of the best ways of doing so.

38. According to paragraph 323 of the report, persons under the age of 18 might not testify except in certain circumstances. The reporting State should explain why that provision was considered necessary. Lastly, he requested further information on freedom of association and legislation to guarantee the rights of trade unions in Paraguay.

39. Mr. Aguilar resumed the Chair.

40. Mr. EL-SHAFEI commended the reporting State for submitting one of the best initial reports the Committee had ever received. At the same time, the Committee would welcome further information regarding any factors that had impeded Paraguay's efforts to implement the Covenant. Also, the initial report had been prepared in February 1994 and therefore required updating.

41. With regard to the question of procedures for denouncing international human rights treaties set out in article 42 of the Constitution, it was unclear whether that article discussed procedures for denouncing treaties in general or specifically human rights treaties. If article 42 applied only to human rights treaties, it was difficult to understand why that distinction had been made. In addition, it would be interesting to learn whether the procedures in question had to be considered by one or both chambers of Congress.

42. The reporting State should clarify whether the law to regulate the terms and conditions of habeas corpus, referred to in paragraph 18, subparagraph 3, of the report, had already been issued; if so, it would be useful to have a full account of that law. If the Government had been compelled to declare a state of emergency during the period covered by the report, it would be useful to learn what rights, if any, had been suspended during that period.

43. The Committee wished to know if the Covenant had been taken into consideration when the First Manual for Human Rights Curricula had been devised in cooperation with the Inter-American Institute of Human Rights and if there had been any other efforts on the part of the authorities to disseminate information regarding the Covenant.

44. He sought clarification as to why children born out of wedlock had the right to inherit parents' personal assets but not their joint property (para. 47). Additional details on how agrarian reform would be encouraged with the participation of peasant women on an equal footing with men (para. 38) should be provided, as well as more information regarding the participation of women in political life. With regard to the statutory provision to promote equality contained in the Electoral Code (para. 82), the reporting State should explain what it was doing to correct gender discrimination in the political party structure and whether it considered such discrimination acceptable.

45. It was noted in paragraph 159 of the report that there had been delays in handing down the final sentences in cases against many public officials and many incidents affecting the normal course of those proceedings. He requested clarification regarding those incidents and statistics as to the number of cases delayed, the length of delays and the prospects for the prompt processing of cases in the future.

46. Lastly, the Committee would welcome more details regarding the life of indigenous people in Paraguay.

47. Mr. KLEIN said that the Committee would be interested in learning more about the difficulties the authorities had encountered in restructuring the police force and the judiciary. Specifically, the reporting State should indicate how the independence of judges was ensured, whether there were any problems of corruption among judges and if any training programmes had been provided for judges who had been appointed under the old regime but continued to hold posts under the new Government. Similarly, he asked if there had been progress in Paraguay's efforts to educate the police about human rights and if there had been any instances of corruption among police officers. He also wished to know what progress had been achieved in the criminal prosecution of

former officials and whether any compensation was being provided for the victims of the previous regime.

48. With regard to the situation in prisons, the report indicated that there was no separation of convicted prisoners and persons awaiting trial, a violation of the Covenant. The reporting State should clarify whether there was any separation of juvenile and adult prisoners in prisons. Finally, he wondered whether there was not a better means of providing incentives for the social rehabilitation of adult prisoners than the system of rating prisoners described in paragraph 240 of the report.

49. Mr. KRETZMER commended the reporting State on the excellence of its report but agreed with Mr. El-Shafei that it lacked information regarding any practical mechanisms that may have been instituted to protect the individual. Since the Committee had continued to receive reports from non-governmental organizations and the United States Department of State of complaints of continued police violence against adults and minors, he wondered whether any specific mechanisms for administrative bodies had been established to deal with such complaints at the national level or if complaints were handled only when they reached international human rights organizations.

50. It was unclear whether there were any conditions for converting arrest into pre-trial detention other than those set out in paragraph 205 of the report. Subparagraph (b) of that paragraph also needed clarification. Lastly, the report made no mention of article 20, paragraph 2, of the Covenant; in that connection, he wondered whether there were any laws in Paraguay prohibiting any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence.

51. Mr. BUERGENTHAL inquired whether it was possible to suspend other rights, in addition to the right not to be detained, during a state of emergency and to what extent those rights were rights that could not be suspended under the Covenant. He wished to know the purpose of a provision in the Paraguayan Constitution that stipulated that suspects had the option of being detained or leaving the country and whether that provision implied the forced expulsion of a citizen from the country. He asked whether habeas corpus applied also to individuals who were being held by the military and whether there was a provision in the Code of Military Criminal Procedure regarding that issue. Paragraph 203 of the report made no reference to military tribunals in the hierarchy of judicial power. It would be interesting to learn whether military tribunals had jurisdiction over civilians during peacetime or only during a state of emergency and whether it was possible to appeal a decision handed down by a military tribunal to the Supreme Court. Finally, he inquired whether prisoners were informed of their rights, many of which were detailed in the report, and if prisoners were told when judges visited prisons and were allowed to communicate freely with them.

52. Mr. ANDO commended the quality of the report and inquired whether the Covenant had been directly invoked in the courts. He sought clarification regarding the treatment of political prisoners, specifically with regard to the reference in paragraph 98 of the report to "clean and healthy facilities not intended for ordinary offenders". He wondered whether that meant that persons

detained under a state of emergency went to better prisons or that the prisons intended for ordinary offenders were not clean and healthy facilities.

53. Like Mrs. Medina Quiroga, he was curious as to the relationship between the length of pre-trial detention and the presumption of innocence and asked for further clarification regarding time-limits for trials and how such limits affected both criminal and civil proceedings.

54. He agreed with Mr. Mavrommatis regarding the issue of abortion and suggested that the reporting State should provide more specific information on that topic. It was also unclear whether there was complete de jure equality between spouses, particularly with regard to the right to matrimonial property and the transmission of the nationality of a child's parents when Paraguayan men or women were married to foreigners.

55. Finally, in the area of freedom of expression and association, paragraph 485 of the report told the minimum number of persons required to found a trade union. He wished to know whether it was possible for workers at small factories to organize unions within an industrial sector.

56. With regard to participation in national political life, he wondered whether the fact that members of the armed and police forces and students of the Military and Police Training Institutes were unable to vote might possibly lead to a coup d'état if such persons had political grievances against a particular Government. There ought to be some way to take the views of such persons into account.

57. Additional information concerning the five young Paraguayan conscientious objectors (para. 438) would be welcome. Clarification of the apparent contradiction between paragraphs 39 and 40 of the report, concerning the right of foreigners to vote, was also needed.

58. Paragraph 558 indicated that indigenous peoples were able to regulate their communal life according to their customs, within the bounds established by the Constitution and universally recognized human rights. He wondered whether any problems had arisen, since some of those customs were not consistent with the provisions of the Constitution - for example, those relating to equality of the sexes, freedom of movement and custodial rights pertaining to children.

59. Mr. POCAR commended the delegation on its excellent report and welcomed the progress made thus far in bringing national legislation into line with the Covenant.

60. Further details would be appreciated regarding measures taken in respect of persons who had been involved in the military dictatorship or had held posts of responsibility during the military regime. He would also appreciate additional information on the status of any relevant judicial proceedings, particularly since certain articles of the Covenant, including article 9, paragraph 5, could apply to events which had occurred prior to the country's ratification of the Covenant. Moreover, allowing persons who had been involved in grave violations of human rights to remain in power might adversely affect the current human rights situation. He also wished to know what was being done to deal with

violations of articles 7 and 9 of the Covenant that had been reported by non-governmental organizations after the ratification of the Covenant.

61. With reference to paragraph 12 of the report, he requested details regarding the "few relevant examples" of case law illustrating the incorporation of human rights law into national legislation. As to the new guarantee of habeas data, information would be welcome concerning the five new trials mentioned in paragraph 23; he wondered whether they related to the 100 victims of repression mentioned in that paragraph.

62. The reporting State should indicate whether any restrictions were placed on the enjoyment of fundamental human rights by foreigners apart from the fact that they could not exercise certain political rights. With respect to article 4 of the Covenant, he wished to know whether he was correct in assuming that only the rights enumerated in the fifth paragraph of article 288 of the Constitution could be suspended during a state of emergency.

63. Paragraph 317 of the report stated that article 105 of the Code of Civil Procedure stipulated that Spanish was the official language in civil procedures, but that witnesses could also express themselves in Guaraní. That appeared to contradict article 140 of the Constitution establishing Spanish and Guaraní as the official languages. It was unclear how the right of persons in detention to have an interpreter if necessary was compatible with article 140. He also wished to know what minorities lived in Paraguay, the languages they used and how those languages were protected.

The meeting rose at 5.50 p.m.